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In re Application of:
MONTGOMERY, Eric, R. :
U.S. Application No.: 10/568,054 :
PCT No.: PCT/US2004/024070 :
International Filing Date: 28 July 2004 :
Priority Date: 28 July 2003 :
Attorney's Docket No.: 7800B.8005 :
For: COMPOSITIONS, METHODS,
DEVICES AND KITS FOR
MAINTAINING OR ENHANCING
TOOTH WHITENING :

DECISION ON RENEWED
PETITION UNDER
37 CFR 1.47(b)

In a decision mailed by this Office on 19 January 2007, the petition under 37 CFR 1.47(b) for acceptance of the application without the signature of sole inventor Eric R. MONTGOMERY was dismissed without prejudice for failure to satisfy the requirements of a grantable petition.

On 12 February 2007, petitioner filed the renewed petition considered herein. The renewed petition includes a declaration executed by the previously non-signing inventor Eric B. MONTGOMERY. Based on the submission of a declaration executed by the previously non-signing sole inventor, the petition under 37 CFR 1.47(b) is **DISMISSED AS MOOT**.

However, the declaration executed by the inventor is not in compliance with 37 CFR 1.497 in that it fails to properly identify the inventor herein. Specifically, the declaration identifies the inventor as Robert Eric MONTGOMERY, while the name of record for this inventor (as set forth in the published international application) is Eric. R. MONTGOMERY.

Section 605.04(b) of the Manual Of Patent Examining Procedure ("MPEP") states that:

Except for correction of a typographical or transliteration error in the spelling of an inventor's name, a request to have the name changed from the typewritten version to the signed version or any other corrections in the name of the inventor(s) will not be entertained, unless accompanied by a petition under 35 U.S.C. 1.182 together with an appropriate petition fee.

In this case, the difference between the inventor's name in the published international application and the declaration appears to be more than a mere typographical error or a phonetic misspelling of the applicant's name. Accordingly, a petition under 37 CFR 1.182 to correct the name of record for the inventor is required before the present declaration can be accepted under 37 CFR 1.497. For such a petition to be grantable, applicant must provide the required petition fee and an explanation as to how the error in the inventor's name was made and that the error in the inventor's name was inadvertent and occurred without deceptive intent.¹

Applicant has **TWO (2) MONTHS** from the mail date of the present decision to submit either: (1) a revised declaration in compliance with 37 CFR 1.497 in which the inventor's name corresponds to name of record for the inventor (i.e., Eric R. MONTGOMERY), if such name is correct (accompanied by an explanation for the error in the present declaration); or (2) a grantable petition under 37 CFR 1.182 to correct the name of the inventor to that set forth in the declaration (i.e., Robert Eric MONTGOMERY), as discussed above.

Failure to file a proper response will result in abandonment of the application. Extensions of time are available under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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¹ If the name of the inventor has been officially changed since the filing of the international application, the requirements for the required petition under 37 CFR 1.182 are as set forth in MPEP section 605.04(c)